

BEFORE THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

METRICOM, INC.)
(Complainant))
)
v.)
)
BOSTON EDISON CO.)
(Respondent))
)

D.T.E. 01-40

**ANSWER OF METRICOM, INC. TO PETITIONS TO INTERVENE OF
MASSACHUSETTS ELECTRIC COMPANY AND CERTAIN MASSACHUSETTS
MUNICIPAL LIGHT PLANTS**

The Complainant, Metricom, Inc. (“Metricom”), pursuant to the ruling of Hearing Officer Voveris at the May 29, 2001 Procedural Conference, and in accordance with 220 C.M.R. 1.03(d), answers the petitions to intervene of Massachusetts Electric Company (“MECO”), dated May 21, 2001, and of eleven Massachusetts Municipal Light Plants (collectively “Municipals”), dated May 22, 2001, as follows:

1. As stated by Metricom at the May 29, 2001 procedural conference, Metricom has no objection to the intervention of either MECO or the Municipals on a limited participant basis, with the right to file a written brief in accordance with the procedural schedule adopted the Hearing Officer in the May 29, 2001 procedural conference. However, Metricom opposes full intervenor status for either MECO or the Municipals in this pole attachment complaint proceeding. For the reasons discussed herein, neither MECO nor the Municipals will be so “substantially and specifically affected” by this pole attachment complaint dispute between

Metricom and Boston Edison Co. (“BECO”) to justify full intervenor status entitling them to rights equal to the existing parties to the dispute –Metricom and BECO—to include engaging in full discovery or to pursue a possible appeal of the ultimate decision by DTE in this proceeding.¹ Accordingly, the Department of Telecommunications and Energy (“DTE”) should grant the petitions to intervene of MECO and the Municipals as limited participants, not as full intervenors.

2. MECO has entered into a pole attachment agreement on March 31, 2000 with Metricom in Massachusetts, and unlike BECO, does not oppose Metricom’s ability to deploy its Ricochet wireless Internet service by attaching to its utility poles. In fact, more than 500 Metricom radios have already been installed on MECO utility poles. MECO’s limited interest in this proceeding, as stated in its Petition, is whether the DTE determination in this case may require that BECO provide “nondiscriminatory access to utility poles, ducts, conduits and rights-of-way for wireless telecommunications equipment” and whether that determination “may be applicable to other utilities in Massachusetts.” MECO Petition at 2, ¶5. However, this interest appears to be equally shared by BECO. In fact, BECO has explicitly requested alternative relief which, if granted by the D.T.E., would limit any determination granting Metricom relief to the “facts and circumstances presented in this proceeding, so as not to create a broad exception to the regulations for all wireless carriers....” BECO Response to Complaint at 6. In

¹ At the May 29, 2001 procedural conference, MECO and the Municipals, through counsel, disclaimed any interest in an evidentiary hearing. Similarly neither has expressed any present interest in offering witnesses, filing

short, MECO's concerns are limited to the scope of any D.T.E. determination, and appear to be very much shared by BECO. Accordingly, MECO should be granted limited participant status entitling it to file a brief addressing its concerns.

3. The Municipals, a grouping of eleven Municipal Light Plants in the Commonwealth, have also filed a petition to intervene.² Unlike MECO, the Municipals oppose Metricom's Complaint on the merits, although Metricom is not seeking a determination in its Complaint as to its attachment rights vis a vis the Municipals. The Municipals principal stated interest in "full intervenor rights [is] in order to protect their right to appeal." Municipals Petition at 6, ¶25. However, any adverse determination the the D.T.E. may make to BECO on the merits of Metricom's complaint will be binding on BECO and can be appealed by BECO if it chooses. Any dispute between Metricom and the Municipals regarding Metricom's right to attach to the Municipals' utility poles is not before the D.T.E. in this proceeding, and certainly should not be the basis for a group of municipal light plants to seek to litigate that issue in this complaint proceeding. Furthermore, municipal grants of location under G.L. c. 166, §22, discussed at length in the Municipals' petition to intervene, are not even at issue in Metricom's pole attachment complaint against BECO. A denial of a municipal grant of location is subject to potentially different remedies, including federal district court

discovery, or to cross-examine witnesses, and the Municipals have stated in writing that they "do not intend" to do so, while reserving their right to change their mind. Municipals Petition at 6, ¶25.

² The Municipals proclaim that "[n]ot a single Massachusetts Municipal Light Plant has been able to reach a mutually acceptable agreement with Metricom regarding the placement of radios on their streetlights or light poles." Municipals' Petition at 3, ¶13. That statement is untrue. Metricom has successfully obtained Grants of Location and negotiated pole attachment agreements with the Belmont and Wakefield, Massachusetts Municipal Light Plants. Moreover, other negotiations are underway with a number of other Massachusetts Municipal Light Plants who have not joined the Municipals' eleven members.

review, under the Telecommunications Act of 1996.³ Such review of local government action does not apply to the case of utilities not owned by the state or local government. Therefore, granting the Municipals full intervenor status would merely add unnecessary complexity to this proceeding and possibly unnecessarily delay it as well. It could delay or complicate discovery if the Municipals should change their mind and wish to engage in discovery or to take an active role in a Technical Conference. Finally, Metricom may be significantly prejudiced if the Municipals, against whom Metricom has not sought a determination by the D.T.E., are allowed appeal rights equivalent to the real utility in interest, BECO, to appeal any decision by the D.T.E. which may be favorable to Metricom. If the Municipals are concerned about the precedential impact of the D.T.E.'s determination in this complaint proceeding, or desire for the D.T.E. to consider these issues as part of a broader industry rulemaking, they may initiate a rulemaking with the D.T.E. if they wish.

For the foregoing reasons, Metricom respectfully requests that the D.T.E. grant the petitions to intervene of MECO and the Municipals' as limited participants, but deny the petitions to the extent that they request full intervenor status.

³ See, e.g., 47 U.S.C. §§ 253, 332©(7)(B). There are approximately twenty-five municipal light plants in the greater Boston metropolitan area with whom Metricom has been negotiating for pole attachment agreements.

Respectfully submitted,

METRICOM, INC.

By its attorneys,

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Dated May 30, 2001

CERTIFICATE OF SERVICE

I, Douglas G. Bonner, hereby certify that on this 30th day of May a true copy of the foregoing Answer of Metricom, Inc. to Petitions to Intervene by Massachusetts Electric Company and Certain Massachusetts Municipal Light Plants, filed by Metricom, Inc., was sent via First Class Mail, Postage Prepaid, to the following:

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